

## Message Text

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ACTION ARA-10

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R 262128Z MAR 75

FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC 2648

C O N F I D E N T I A L SANTIAGO 1832

EO 11652: GDS

TAGS: CI, PINT

SUBJECT: SUPREME COURT CLOSES FUENTEALBA CASE

REF: SANTIAGO 7555, DEC 12, 1974

1. SUMMARY. SUPREME COURT REJECTED ON TECHNICAL GROUNDS REQUEST FROM FUENTEALBA'S LAWYER TO DECLARE UNCONSTITUTIONAL DECREE LAWS USED TO JUSTIFY FUENTEALBA'S EXPULSION, THEREBY DEFINITELY CLOSING CASE AND DEMONSTRATING ONCE AGAIN COURT'S RELUCTANCE TO CHALLENGE LEGAL UNDERPINNINGS OF JUNTA'S AUTHORITY. END SUMMARY.

2. SUPRME COURT MARCH 22 REFUSED TO HEAR ARGUMENTS THAT DECREE LAWS 81 AND 788 ARE UNCONSTITUTIONAL. FORMER WAS USED AS LEGAL BASIS FOR EXPULSION OF CHRISTIAN DEMOCRATIC LEADER RENAN FUENTEALBA IN LATE NOVEMBER 1974, WHILE LATTER, HURRIEDLY ISSUED IN WAKE OF HIS DEPARTURE, DECLARED ALL PREVIOUS DECREE LAWS WHICH ABRIDGED CONSTITUTIONAL PROVISIONS IPSO FACTO LEGAL. FUENTEALBA'S ATTORNEY HAD CHALLENGED CONSTITUTIONALITY OF BOTH IN DEC 10 SUBMISSION TO SUPRME COURT (REFTEL).

3. COURT RULED UNANIMOUSLY ON TECHNICAL GROUNDS THAT SUBSTANCE OF FUENTEALBA QUESTION (REQUEST FOR HABEAS CORPUS--AMPARO) HAD ALREADY BEEN REJECTED, SO THERE WAS  
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NO VALID CASE BEFORE COURT. ACCORDING TO PRESS REPORTS,

HOWEVER, FOUR OF THE 13 MEMBERS ARGUED THAT SUBSTANTIVE ARGUMENTS ON ISSUE SHOULD BE CONSIDERED. THEY WERE REPORTEDLY OVERRULED BY MAJORITY VOTE.

4. COMMENT. SUPREME COURT DECISION NOW CONCLUDES ALL LEGAL ASPECTS OF FUENTEALBA CASE. IT ALSO AGAIN DEMONSTRATES SUPREME COURT'S GREAT RELUCTANCE TO ENTER SUBSTANTIVE THICKET OF CONSTITUTIONALITY OF JUNTA'S DECREE LAWS, ESPECIALLY THOSE WHICH HAVE SECURITY OVERTONES. COURT COULD HAVE RULED ON CONSTITUTIONALITY ISSUE BEFORE IT RULED AGAINST "AMPARO" REQUEST. IT CHOSE NOT TO, THUS LEAVING WAY CLEAR TO DUCK THE ISSUE ON PROCEDURAL GROUNDS.

5. AN ALTERNATE MEMBER OF COURT ARGUED DEFENSIVELY TO EMBOFF BEFORE CURRENT DECISION THAT COURT OPINION CHANGES VERY SLOWLY. HE NOTED CORRECTLY THAT COURT RULING OF UNCONSTITUTIONALITY IN THIS CASE WOULD CHALLENGE FOUNDATION OF JUNTA'S AUTHORITY, AND SUGGESTED COURT WOULD TAKE SUCH DECISION ONLY WHEN CONVINCED OF GREAT PRESSURE IN FAVOR OF IT. NINE TO FOUR SPLIT ON SUBSTANCE OF CASE MAY BE SIGN PRESSURE IS MOUNTING SOMEWHAT.

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## Message Attributes

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**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
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**Disposition Approved on Date:**  
**Disposition Authority:** GolinoFR  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
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**Enclosure:** n/a  
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**Review Action:** RELEASED, APPROVED  
**Review Authority:** GolinoFR  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 08 SEP 2003  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <08 SEP 2003 by BoyleJA>; APPROVED <14 NOV 2003 by GolinoFR>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
05 JUL 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
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**Status:** NATIVE  
**Subject:** SUPREME COURT CLOSES FUENTEALBA CASE  
**TAGS:** PINT, CI, PDC, (FUENTEALBA, RENAN)  
**To:** STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006